

**BEFORE THE DIVISION OF INSURANCE**

**STATE OF COLORADO**

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**FINAL AGENCY ORDER O-11-002**

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**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF COPIC  
INSURANCE COMPANY**

**Respondent**

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Copic Insurance Company (the "Respondent"), pursuant to § 10-1-203, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated March 4, 2010, (the "Report"), relevant examiners' work papers, all written submissions and rebuttals, and the recommendations of staff.

The Commissioner finds and orders as follows:

**FINDINGS OF FACT**

1. At all relevant times, the Respondent was licensed by the Division to write Accident and Health; General Casualty; and Medical Malpractice Insurance.
2. In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., on March 4, 2010, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2008 through December 31, 2008.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners' handbook. The Commissioner also employed other guidelines and procedures that she deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report. These included affidavits supporting Respondent's position that it is exempt from long-term care regulation due to permission granted verbally by a prior Commissioner. Based on the record before the Commissioner, the Commissioner finds that there are disputed issues of fact regarding whether Respondent received a verbal exemption from compliance with long-term care regulation from a prior insurance commissioner in the 1996-1997 time period, and the nature and scope of any verbal exemption. Notwithstanding these findings, the Commissioner specifically states that she is not making a finding that any prior exemption, verbal or otherwise, is binding on this Commissioner.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiners' work papers.

#### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this Final Agency Order ("Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Failure of the Company's application form, to provide information regarding contributions to the Company's Political Action Committee that is not misleading, to applicants. The Respondent shall provide evidence to the Division that it has revised its applications and other relevant forms, along with its practices and pertaining to participation in the Company's PAC to avoid any potential to be misleading to applicants, as required by Colorado insurance law.
10. Issue A2 concerns the following violation: Failure to use, develop and utilize long-term care coverage applications with consequent failure to make determinations and provide notices, forms and disclosures as required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has developed appropriate forms, submitted updated form certification filings, and has implemented necessary procedural changes for its long-term care insurance in order to ensure compliance with Colorado

insurance law.

11. Issue A3 concerns the following violation: Failure to comply with Colorado insurance laws with regard to implementation of its long-term care coverage included in medical malpractice policies and provided as a benefit to Company employees. The Respondent shall provide evidence to the Division that it has revised its long-term care forms, filed certifications and distributed the revised forms to insured persons, and that it has either completed those processes required, or revised its long-term care program in order to ensure compliance with Colorado insurance law.
12. Issue B1 concerns the following violation: Failure to develop and implement standards for marketing as required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has developed and implemented the marketing standards required in order to ensure compliance with Colorado insurance law.
13. Issue B2 concerns the following violation: Failure to provide to prospective enrollees of long-term care the Shopper's Guide required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.
14. Issue E1 concerns the following violation: Failure to include a complete list of forms in its annual reports for claims-made liability insurance coverage certifications. The Respondent shall provide evidence to the Division that it has reviewed its forms certification practices, submitted updated complying forms certifications for its claims-made liability insurance and has implemented necessary procedural changes in order to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
15. Issue E2 concerns the following violation: Failure to include a complete list of forms and some elements of certification in its long-term care health coverage certifications. The Respondent shall provide evidence to the Division that it has reviewed its forms certification practices, submitted updated complying forms certifications for its long-term care insurance and has implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.
16. Issue E3 concerns the following violation: Failure, in some cases, to assign a unique identifying form number to claims-made liability insurance policy forms. The Respondent shall provide evidence to the Division that it has reviewed its form identification and numbering practices, made appropriate revisions to affected forms and implemented necessary procedural changes

in order to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

17. Issue E4 concerns the following violation: Failure, in some cases, to include the required provisions for cancellations and non-renewal in medical malpractice policy forms. The Respondent shall provide evidence to the Division that it has reviewed its policy contract forms and implemented necessary revisions in order to ensure compliance with Colorado insurance law.
18. Issue E5 concerns the following violation: Failure to include in policy forms a provision indicating the insured's approval and acknowledgement, by signature is required on the written endorsement for certain exclusionary changes to the policy at renewal. The Respondent shall provide evidence to the Division that it has reviewed its policy contracts and implemented necessary forms revisions in order to ensure compliance with Colorado insurance law.
19. Issue E6 concerns the following violation: Failure to clearly and adequately disclose the policy provisions by including incorrect and/or incomplete definitions or statements. The Respondent shall provide evidence to the Division that it has revised its forms to include complete definitions and information in compliance with Colorado insurance law.
20. Issue E7 concerns the following violation: Failure to include a statement in long-term care certificates of insurance that the group master policy determines contractual provisions, as required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised its long-term care certificate forms, submitted updated complying forms certifications for its long-term care insurance and has distributed the revised certificates to insured persons in order to ensure compliance with Colorado insurance law.
21. Issue E8 concerns the following violation: Failure, in some cases, to provide a disclosure statement form with the required content and format and to execute and maintain the required proof of delivery and acceptance of the disclosure form. The Respondent shall provide evidence to the Division that it has amended its forms, implemented a proof of delivery and acceptance form and procedure in order to ensure compliance with Colorado insurance law.
22. Issue E9 concerns the following violation: Failure to include in long-term care coverage policy form and certificates a provision stating a policyholder must request in writing or sign any amendment which reduces or eliminates coverage. The Respondent shall provide evidence to the Division that it has

revised its forms, submitted updated complying forms certifications for its long-term care insurance in order to ensure compliance with Colorado insurance law.

23. Issue E10 concerns the following violation: Failure, in some cases, to include definitions which satisfy the requirements of Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised its forms, submitted updated complying forms' certifications for its long-term care insurance and distributed the revised forms to policyholders in order to ensure compliance with Colorado insurance law.
24. Issue E11 concerns the following violation: Failure to include a correct provision for continuation of coverage in a long-term care certificate when the eligibility for coverage is based upon a relationship that terminates. The Respondent shall provide evidence to the Division that it has revised its form, submitted updated complying forms certifications for its long-term care insurance and has distributed revised copies of the certificate to insured persons in order to ensure compliance with Colorado insurance law.
25. Issue E12 concerns the following violation: Failure, in some cases, to include all elements of an incontestability provision in a long-term care policy or certificate when including the provision. The Respondent shall provide evidence to the Division that it has revised its forms, submitted updated complying forms certifications for its long-term care insurance in order to ensure compliance with Colorado insurance law.
26. Issue E13 concerns the following violation: Failure, in some cases, to include the required thirty (30) day free look provision, or including it other than on the first page as required under Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised its forms and submitted updated complying forms certifications for its long-term care insurance in order to ensure compliance with Colorado insurance law.
27. Issue E14 concerns the following violation: Failure to provide the required Outline of Coverage in the format and with content required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has developed an appropriate Outline of Coverage, submitted updated forms certifications filing for its long-term care insurance and has implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.
28. Issue E15 concerns the following violation: Failure, in some cases, to include the required reinstatement provisions in long-term care group policy coverage and certificates of insurance, and to provide and retain the required forms for notice and waiver of the right to designate another

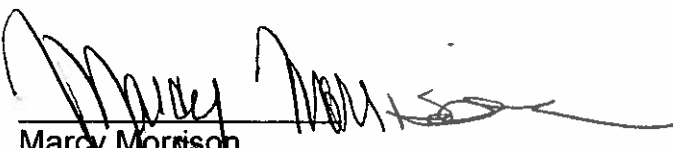
person to receive notice of lapse or termination of long-term care certificate of insurance. The Respondent shall provide evidence to the Division that it has revised its forms, submitted updated complying form certifications for its long-term care insurance and distributed the revised forms to policyholders in order to ensure compliance with Colorado insurance law.

29. Issue F1 concerns the following violation: Failure to clearly disclose requirements for premium discount and continuing eligibility and provide ninety (90) day notification upon loss of discount. The Respondent shall provide evidence to the Division that it has revised its policy forms to clearly disclose the effects of CMS membership on premium rates and its procedures to ensure that notification of any premium increase is provided in a timely manner consistent with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
30. Issue F2 concerns the following violation: Failure, in some cases, to include specific rates, discounts, surcharges, and loads in rate filings as required by Colorado insurance law, or to include actuarial or statistical justification for such rates, discounts, surcharges and loads. The Respondent shall provide evidence to the Division that it has submitted all rates, discounts, surcharges and loads in a rate filing, and that all factors filed include appropriate statistical, actuarial justification and/or other adequate supporting data (such as competitive analysis, or use solely by sophisticated policyholders) in order to ensure compliance with Colorado insurance law. Should the Company be unable to provide adequate justification for its rates, discounts, surcharges and loads, it should discontinue the use of such factors. Although additional justification has been provided to the Division, all appropriate justification must be submitted in one or more rate filing(s).
31. Issue J1 concerns the following violation: Failure, in some cases, to report medical malpractice settlements or judgments to the Colorado Board of Medical Examiners within fourteen (14) days from the settlement date as required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has corrected its procedures to ensure that reporting of claim settlements to the Colorado Board of Medical Examiners are completed within fourteen (14) days as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
32. Based on the record as a whole, including Respondent's submissions, rebuttals, and/or affidavits, no fines are being assessed for issues A2, A3, B1, B2, E2, E7, E9, E10, E11, E12, E13, E14, and E15. However, the corrective actions related to these issues, identified in the market conduct examination report and included in this Order, are necessary to bring the

Respondent into compliance with Colorado laws and regulations with respect to long-term care insurance offered by Respondent.

33. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of forty-four thousand and no/100 dollars (\$44,000.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division Bulletin No. B-1.3, originally issued on January 1, 1998, re-issued May 8, 2007. Said penalty shall be assessed a 10% surcharge up to \$75,000.00, or \$4,400.00, pursuant to 24-34-108, C.R.S. for a total balance due of \$48,400.00 which will be due to the Division within 30 days of the signing of this Final Agency Order. This surcharge will be used to fund the development, implementation and maintenance of a consumer outreach and education program.
34. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related Order.
35. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
36. Copies of the examination report, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

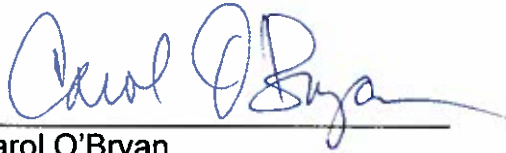
**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the Report dated July 2, 2010, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this second day of July, 2010.

  
Marcy Morrison  
Commissioner of Insurance

**CERTIFICATE OF MAILING**

I hereby certify that on the 2nd day of July, 2010, I caused to be deposited the **FINAL AGENCY ORDER NO. O-11-002 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF COPIC INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

MR. STEVEN A. RUBIN  
COPIC INSURANCE COMPANY  
7351 LOWRY BLVD.  
DENVER, CO 80230



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Carol O'Bryan  
Director of Market Regulation  
Division of Insurance